

**Introduced by Senator Wright**

February 18, 2010

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An act to add Division 24 (commencing with Section 90000) to the Financial Code, relating to debt negotiation.

**LEGISLATIVE COUNSEL'S DIGEST**

SB 1188, as introduced, Wright. Debt negotiation organizations.

Existing law, the Check Sellers, Bill Payers and Proraters Law, provides for licensure and regulation by the Commissioner of Corporations of persons engaged in, among other activities, the business of receiving money as an agent of the obligor for the purpose of paying bills, invoices, or accounts for the obligor.

This bill would make it unlawful for a person to provide debt negotiation services, as defined, unless it, among other things, obtains and maintains insurance coverage, as specified, and files a form establishing proof of this required insurance coverage with the Commissioner of Financial Institutions along with a filing fee, to be established by the commissioner. The bill would require a debt negotiation organization, prior to providing debt negotiation services, to enter into a specified written contract with an individual, including, but not limited to, a full and detailed description of the debt negotiation services to be performed by the debt negotiation organization as well as the estimated date or length of time by which the services are to be performed, and a notice of the right to cancel. The bill would prohibit a debt negotiation organization from, among other things, imposing any fees or charges or receiving any money for debt negotiation services until the individual agrees in writing to those fees or charges and the plan, as defined. The bill would also specify how those fees or charges are to be determined and when they may be collected. The bill would

exempt various entities from these provisions. The bill would specify that a violation of these provisions would constitute unfair competition and would authorize any injured individual to bring an action to enjoin and restrain any violation of these provisions and to recover damages. The bill would make these provisions operative on January 1, 2012.

Vote: majority. Appropriation: no. Fiscal committee: yes.

State-mandated local program: no.

*The people of the State of California do enact as follows:*

1 SECTION 1. Division 24 (commencing with Section 90000)  
2 is added to the Financial Code, to read:

3  
4 DIVISION 24. CREDIT CARD DEBT NEGOTIATION

5  
6 CHAPTER 1. DEFINITIONS

7  
8 90000. As used in this division, the following terms shall have  
9 the following meanings:

10 (a) "Concessions" means the assent to repayment of an  
11 unsecured credit card debt in terms more favorable to an individual  
12 than the terms of the contract between the individual and a creditor.

13 (b) "Creditors" means persons to whom an individual owes  
14 unsecured credit card debts.

15 (c) "Debt negotiation organization" or "organization" means a  
16 person that provides debt negotiation services.

17 (d) "Debt negotiations services" or "services" means acting as  
18 an intermediary between an individual and one or more of the  
19 individual's creditors in order to obtain concessions for that  
20 individual's credit card debt, but without holding or disbursing  
21 funds to the individual's creditors, for a fee to be paid by the  
22 individual.

23 (e) "Debt principal" means the total amount of debt, including  
24 unpaid interest and fees, owed by the individual to a creditor as of  
25 the date of the initial enrollment by the individual in a plan.

26 (f) "Individual" means a natural person.

27 (g) "Multiple pay settlement" means a settlement paid in  
28 installments.

29 (h) "Person" shall have the same meaning as in Section 18.

1 (i) “Plan” means a program or strategy of debt negotiation  
2 services that contemplates that creditors will settle credit card debts  
3 for less than the full amount owed by the individual.

4 (j) “Settlement” means an arrangement where a creditor agrees  
5 to accept concessions on an individual’s account resulting from  
6 negotiations conducted on the individual’s behalf by the debt  
7 negotiation organization and the funding of that arrangement is  
8 provided by the payment of funds from the individual to the  
9 creditor.

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11 CHAPTER 2. REQUIREMENTS  
12

13 90010. It shall be unlawful for a person to provide debt  
14 negotiation services unless it does all of the following:

15 (a) Obtains and maintains at all times insurance coverage for  
16 employee dishonesty, depositor’s forgery, and computer fraud, in  
17 an amount not less than one hundred thousand dollars (\$100,000).  
18 The deductible on this coverage shall not exceed 10 percent of the  
19 face amount of the insurance policy coverage.

20 (b) Is prepared to provide a copy of the insurance coverage  
21 required by this section to any party requesting a copy for a fee  
22 that does not exceed the cost of copying.

23 (c) Files a form establishing proof of the required insurance  
24 coverage with the Commissioner of Financial Institutions along  
25 with a fee, to be established by the commissioner, in an amount  
26 not to exceed the cost of filing the form. These fees shall be  
27 deposited in the Financial Institutions Fund established in Section  
28 265.

29  
30 CHAPTER 3. CONTRACTS  
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32 90020. (a) Prior to providing debt negotiation services to an  
33 individual, a debt negotiation organization shall enter into a written  
34 contract with that individual that shall be signed and dated by the  
35 individual and shall include all of the following:

36 (1) A full and detailed description of the debt negotiation  
37 services to be performed by the debt negotiation organization for  
38 the individual and the estimated date by which or length of time  
39 in which the services are to be performed.

(2) All terms and conditions of payment, including the estimated total of all payments to be made by the individual.

(3) The organization's principal business address and the name and address of its agent in the state authorized to receive service of process.

(4) A clear and conspicuous statement in boldface type, in the immediate proximity to the space reserved for the individual's signature, that states: "You may cancel this contract within 5 business days after the date the contract is signed."

(5) A copy of the following "Notice of Right to Cancel" shall be provided to the individual:

NOTICE OF RIGHT TO CANCEL

YOU MAY CANCEL THIS CONTRACT FOR DEBT NEGOTIATION SERVICES WITHIN 5 BUSINESS DAYS AFTER THE DATE THE CONTRACT IS SIGNED BY YOU WITHOUT INCURRING ANY PENALTY OR OBLIGATION. TO CANCEL THIS CONTRACT, MAIL OR DELIVER A SIGNED AND DATED COPY OF THIS CANCELLATION NOTICE OR ANY OTHER WRITTEN NOTICE CLEARLY INDICATING YOUR DESIRE TO CANCEL YOUR CONTRACT.

To: \_\_\_\_\_  
(Name of Debt Negotiation Organization)

At: \_\_\_\_\_  
(Address)

BY SIGNING AND DATING THIS NOTICE, I HEREBY CANCEL MY CONTRACT, EXECUTED ON: \_\_\_\_\_  
(Date Contract Signed)

\_\_\_\_\_  
(Signature of Individual)

\_\_\_\_\_  
(Date)

\_\_\_\_\_  
(Address)

\_\_\_\_\_  
(Phone Number)

1 (b) The debt negotiation organization shall provide the  
2 individual, at the time the documents are signed, a copy of the  
3 completed written contract and all other documents the debt  
4 negotiation organization requires the individual to sign.

5  
6 CHAPTER 4. FEES  
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8 90030. (a) No debt negotiation organization shall impose  
9 directly or indirectly a fee or other monetary charge on an  
10 individual or receive money from or on behalf of an individual for  
11 debt negotiation services until the individual agrees in writing to  
12 the fees or other monetary charges and to the plan negotiated by  
13 the debt negotiation organization.

14 (b) The settlement fees and other monetary settlement charges  
15 imposed by a debt negotiation organization shall not exceed  
16 one-half of the difference between the debt principal and the  
17 concession agreed upon with the individual's creditor.

18 (c) In the event of a multiple pay settlement, a debt negotiation  
19 organization shall only collect a fee that is based on the amount  
20 of the multiple installment payment at the time that the multiple  
21 installment payment is made.

22 (d) A debt negotiation organization shall not collect any fees  
23 other than those fees specified in this section and shall collect those  
24 fees only after a settlement of an account with the individuals  
25 creditor has been agreed upon and documentation memorializing  
26 the funding of the settlement has been executed.

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28 CHAPTER 5. PROHIBITIONS  
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30 90040. No debt negotiation organization shall do any of the  
31 following:

32 (a) Make or use any false or misleading representations or omit  
33 any material fact in the offer or sale of services offered, or engage,  
34 directly or indirectly, in any fraudulent, false, misleading,  
35 unconscionable, unfair, or deceptive act or practice in connection  
36 with the offer or sale of any of its services.

37 (b) Provide services to an individual without executing a written  
38 contract that complies with this division.

39 (c) Fail to provide copies of all contracts and other documents  
40 that the individual is required to sign.

1 (d) Fail to obtain insurance coverage or fail to make that  
2 coverage information available for public inspection.

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4 CHAPTER 6. EXEMPTIONS

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6 90050. This division shall not apply to any of the following:

7 (a) A person who engages in debt adjustment to adjust the  
8 indebtedness owed to that person.

9 (b) The following entities or their subsidiaries:

10 (1) The Federal National Mortgage Association.

11 (2) The Federal Home Loan Mortgage Corporation.

12 (3) A bank, bank holding company, trust company, savings and  
13 loan association, credit union, credit card bank, or savings bank  
14 that is regulated and supervised by the Office of the Comptroller  
15 of the Currency, the Office of Thrift Supervision, the Federal  
16 Reserve, the Federal Deposit Insurance Corporation, the National  
17 Credit Union Administration, or any state banking regulator.

18 (c) A consumer reporting agency as defined in the Federal Fair  
19 Credit Reporting Act (15 U.S.C. Sec. 1681(a)).

20 (d) Any subsidiary or affiliate of a bank holding company, its  
21 employees and its exclusive agents acting under written agreement.

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23 CHAPTER 7. VIOLATIONS

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25 90060. (a) A violation of this division is an act of unfair  
26 competition within the meaning of Chapter 5 (commencing with  
27 Section 17200) of Part 2 of Division 7 of the Business and  
28 Professions Code.

29 (b) In addition, any individual injured by a violation of this  
30 division may bring an action to enjoin and restrain any violation  
31 of this division and to recover damages. Judgment shall be entered  
32 for actual damages. However, in no case shall the judgment be for  
33 less than the amount paid by the individual to the debt negotiation  
34 organization plus reasonable attorney's fees and costs.

CHAPTER 8. OPERATION

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90070. This division shall become operative on January 1,  
2012.

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